

Hon. Naomi R. Buchwald
Civil Action File No. 07-4845

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UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ELAINE L. CHAO, Secretary of Labor, United States Department of Labor,	:	
Plaintiff,	:	Civil Action File
v.	:	No. 07-4845
AMERICAN FINANCIAL SERVICES, INC. 401(K) PLAN,	:	ATTORNEY DECLARATION
Defendants.	:	

I, JOHN CAMPBELL, do hereby declare under penalty of perjury:

1. I am an attorney on the staff of the U.S. Department of Labor, Office of the Solicitor.

My office is at 201 Varick Street, Room 983, New York, New York, 10014.

2. I am the attorney assigned to this matter.

3. I am told, and I believe, that only the intervention of this Court through the appointment of an Independent Fiduciary will suffice to carry out the distribution of the assets held in the American Financial Services, Inc. 401(k) Plan ("the Plan"). This Plan has been without an active trustee or fiduciary since the American Financial Services, Inc. company

ceased operations when its business premises at 2 World Trade Center were destroyed on September 11, 2001. American Skandia is currently holding the assets of the Plan which are known to the Secretary of Labor's investigators.

4. The Secretary of Labor's investigators and attorneys effected service of the summons and complaint in this matter on June 19, 2007, by delivery of those documents to Concetta Hawkins, the last known administrator of the Plan. A copy of the completed Return of Service Form is attached as Exhibit A.

4. The Secretary of Labor proposes for the position of Independent Fiduciary Ms. Jacqueline Carmichael. Ms. Carmichael has acted as Independent Fiduciary to other abandoned employee benefit plans in matters before this District Court. For example, Hon. Allen G. Schwartz, U.S.D.J., appointed Ms. Carmichael in Chao v. CCS Technologies, Inc. 401(k) Plan, Civil Action File No. 01-8931. Hon. John G. Koeltl, U.S.D.J., appointed Ms. Carmichael in Chao v. The Publications Company, Inc. 401(k) Plan, Civil Action File No. 02-7937. Hon. Barbara S. Jones, U.S.D.J., appointed Ms. Carmichael in Chao v. Edel America Records, Inc. 401(k) Plan, Civil Action File No. 04-CV-01785. Hon. Louis Stanton, U.S.D.J., appointed Ms. Carmichael in Chao v. Iframe, Inc. 401(k) Plan, Civil Action File No. 05-10792. A copy of Ms. Carmichael's *curriculum vitae* is attached as Exhibit B.

5. To the best of my knowledge and belief, the foregoing is true and accurate.

Executed on the 13th day of July, 2007.

/s/ **John G. Campbell**
John Campbell
Attorney (JC-2125)

EXHIBIT A

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ⁽¹⁾	DATE	<u>6/19/07</u>
NAME OF SERVER (PRINT) <u>Jeffrey D. Singer</u>	TITLE	<u>Investigator</u>
Check one box below to indicate appropriate method of service		
<input checked="" type="checkbox"/> Served personally upon the defendant. Place where served: <u>8 W. 38th St., 8th Floor, NY, NY 10018 (see further description under "O-Rec.")</u>		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____ _____		
<input type="checkbox"/> Other (specify): <u>Documents personally served to Constance Hawkins who is believed to be one of the four known administrators of the American Financial Services, Inc. 401(k) Plan</u>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>6/19/07</u> Date</p> <p style="text-align: right;"><u>Jeffrey D. Singer</u> Signature of Server</p> <p style="text-align: right;"><u>33 Whittemill Street, Suite 1200</u> Address of Server <u>New York, NY 10004</u></p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT B

JACQUELINE M. CARMICHAEL
JM PENSION ADVISORY, INC.
15807 CRABBS BRANCH WAY, UNIT B
DERWOOD, MARYLAND 20855
301/417-0099

EDUCATION

- Graduated 1980 from George Washington University, B.B.A. degree
- Qualified Plan Administrator, designation by American Society of Pension Actuaries, earned 1992
- Qualified 401(k) Administrator, designation by American Society of Pension Actuaries, earned 2001

RELATED PENSION EXPERIENCE

1995 - present ***JM Pension Advisory, Inc.***

Founder, President and sole shareholder of this pension consulting and administration firm. (In 1995, Carmichael Hill was split into two entities – Carmichael Hill and JM Pension). In addition to the services mentioned below, became more active in pension consulting for "troubled" plans, generally involving IRS or DOL intervention.

1987-1995 ***Carmichael Hill & Associates, Inc.***

Co-Founder and Vice President of this registered investment advisory and pension administration firm. Responsible for the design, administration and government reporting of over 100 Defined Benefit and Defined Contribution plans. Also involved in establishing appropriate procedures for allocating participant-directed plans. Wrote investment policy statements for plans. Performed due diligence and reconciled either trustee reports for plans when trustees were changed or record-keeper reports when custodian of funds were changed. Coordinated activities and specific issues with plans' ERISA attorneys, corporate attorneys, CPAs, and auditors as needed.

1983-1987 ***Benefit Planning Services***

Supported two partners in various benefit and financial planning for individuals and companies. This involved feasibility studies for establishing qualified retirement plans, calculating minimum required distributions, quantifying tax implications of distributions from qualified retirement plans

ADDITIONAL INFORMATION

- Teach continuing education classes for CPAs on qualified retirement plans, completing the 5500 form, tax law changes affecting qualified retirement plans and auditing qualified retirement plans.
- A member in good standing of the American Society of Pension Actuaries
- Extensive experience with Internal Revenue Service in self-audit applications such as VCR and Walk-In CAP resulting in reduced penalties assessed to the plan sponsor and maintenance of plan's tax-qualified status.
- Successfully obtained Internal Revenue Service favorable determination letters on all terminating plans (defined benefit and defined contribution plans) submitted.
- Successfully obtained Internal Revenue Service "clean audit" reports during routine audits of clients' Forms 5500 (annual tax return).
- Coordinated and assisted the Department of Labor in its audit of a well-known firm in Pittsburgh, PA when I discovered the Trustee had taken funds from the plan's profit sharing plan for his own personal use.
- Coordinated and assisted the Department of Labor in its audit of several 401k plans that reported delinquent funding of participant money.
- Serve(d) as Independent Fiduciary on nineteen "orphan" or troubled ERISA plans pursuant to US District Court appointments in the states of Virginia, New Jersey and New York.
- Serve(d) as Independent Fiduciary on twenty "orphan" or troubled ERISA plans investigated by the Department of Labor, appointed voluntarily by the incumbent Trustee or Bankruptcy Trustee.